

COUNTY OF SAN DIEGO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject

Procuring Architectural, Engineering, and Related Professional Services

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I. Purpose

To establish the policy for selecting and contracting with private firms for architectural, landscape architectural, engineering, environmental, land surveying, construction project management, and related professional services.

II. Background

Sections 4525 through 4529.5 of the Government Code (popularly known as the Mini-Brooks Act) govern contracts between public entities and private architectural, landscape architectural, engineering, environmental, land surveying, and construction project management firms. These statutes establish a Qualifications-Based Selection (QBS) method that public agencies in California must use to contract for professional services. This method requires that such services be engaged on the basis of demonstrated competence and qualifications for the types of services to be performed and at a fair and reasonable price. Accordingly, public agencies may not utilize competitive bidding for such services, except in the limited instances where the state or local agency head determines that the services needed are more of a technical nature and involve little professional judgment and that requiring bids would be in the public interest. (Gov. Code, §4529.) In addition, it is a stated goal of the Mini-Brooks Act that these procedures shall assure maximum participation of small business firms [as defined]. (Gov. Code, §4526.)

While the Mini-Brooks Act requires local agencies, such as the County, to implement a QBS method of consultant selection, many implementation provisions of the Mini-Brooks Act are discretionary. This policy is intended to implement all mandatory provisions of the Mini-Brooks Act and those discretionary provisions of the Mini-Brooks Act expressly set forth in this policy.

An additional purpose of this policy is to simplify and economize the QBS process for consultants on Minor Projects (as defined below). To this end, the County may enter into Cooperative Agreements with the City of San Diego (City) and other agencies with established procedures, whereby the County, City, and other signatory agencies to the Cooperative Agreement may jointly formulate and use lists of qualified consultants to provide Professional Services for Minor Projects. This policy implements the County's consultant-selection procedure in a manner consistent with provisions of any such Cooperative Agreement.

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III. Definitions

- A. Administering Department: Any County department listed under CAO Reference at the end of this policy, and any other County department that the Board of Supervisors may authorize, by amendment to this Policy, from time to time to contract with Firms to obtain Professional Services to fulfill its designated functions.
- B. As-Needed List: A list of qualified Professional Services Firms established under procedures of the Cooperative Agreement for any one specific discipline.
- C. City: The City of San Diego.
- D. Cooperative Agreement: The Cooperative Agreement between the City and County, County Contract Number 35450-A, dated March 12, 1996, which provides joint procedures whereby the City, County, and other signatory agencies, as well as any amended, follow-on or similar agreement between the same parties or substantially the same parties, may qualify Firms with which the signatory agencies may enter into negotiations for the provision of Professional Services on Minor Projects; and Appendix A, "County and City of San Diego's Professional Consultant Selection Procedural Guidelines for Pre-Qualified As-Needed Lists," attached thereto.
- E. Department Contract Compliance Coordinator: The representative of an Administering Department designated by the Director of the department as responsible for assuring compliance with this policy.
- F. Disabled Veterans Business Enterprise (DVBE): Those business enterprises described in Board of Supervisors Policy B-39a, Disabled Veterans Business Enterprise Program.
- G. Disadvantaged Business Enterprise (DBE): Those business enterprises defined in Part 49, Section 26 of the Code of Federal Regulations (49 CFR 26).
- H. Firm: Any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice any Professional Services included in Government Code Sections 4525 through 4529.5.
- I. Major Projects: Projects for which a Firm's fee exceeds \$250,000.
- J. Minor Projects: Projects for which a Firm's fee is equal to, or less than, \$250,000. For purposes of administering this policy in accordance with the

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Cooperative Agreement, Minor Projects are further sub-categorized as follows:

1. Large Minor Projects: Projects for which a Firm's fee is greater than \$100,000, but equal to, or less than, \$250,000.
2. Small Minor Projects: Projects for which a Firm's fee is between \$50,000 and \$100,000.
3. Incidental Minor Projects: Projects for which a Firm's fee is less than \$50,000.

K. Minor Projects Qualification Procedures: Procedures to be jointly developed by representatives of Administering Departments to govern qualification and selection processes for Firms on Minor Projects, as further described in Section V. B., below.

L. Professional Services: Those professional services set forth in Government Code §4525, subdivisions (d), (e), and (f), including architectural, landscape architectural, engineering, environmental, land surveying and construction project management services, and professional services incidental thereto that members of these professions and those in their employ may logically or justifiably perform.

M. Small Business Concern: Those businesses defined in Board of Supervisors Policy B-53, Small Business Policy (SBP).

IV. Policy

It is the policy of the Board of Supervisors that:

- A. When the Director of an Administering Department determines that the department needs Professional Services, the County of San Diego shall contract for such services in accordance with the procedures set forth in this policy.
- B. The selection of Firms to provide Professional Services shall be a Qualifications-Based Selection (QBS) process made on the basis of Firms' demonstrated competence and qualifications for the Professional Services to be performed, as authorized by Government Code §4526, et seq., rather than on competitive bidding based on price.

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- C. The County's Professional Services contracting procedures shall comply with all mandatory provisions of Government Code Sections 4525 through 4529.5 and with the discretionary requirements of those statutes as specified in this policy.
- D. Pursuant to Government Code §4528, Professional Services contracts shall be negotiated for fair and reasonable compensation for services to be performed.
- E. For Minor Projects, the County shall fully cooperate with the City in formulating and administering As-Needed lists of Firms to be used on Minor Projects, and with any other public agencies that may execute the Cooperative Agreement, pursuant to terms of the Cooperative Agreement.
- F. This policy, and the procedures adopted by Administering Departments hereunder, shall assure maximum participation of Small Business Firms in Professional Services contracts. (Gov. Code §4526.)
- G. This policy, and the procedures adopted by Administering Departments hereunder, shall assure the goals of Board Policy B-39a, Disabled Veterans Business Enterprise Program, and Policy B-53, Small Business Policy (SBP), are considered in selection processes described in this policy.
- H. This policy prohibits, and any procedures adopted pursuant to this policy shall prohibit, practices that might result in unlawful activity including, but not limited to, rebates, kickbacks, or other unlawful consideration. (Gov. Code §4526.)
- I. No County employees shall participate in selection processes described in this policy when those employees have a relationship with a person or business entity seeking a contract for Professional Services with the County that would subject those employees to prohibitions of Government Code §87100.
- J. The QBS procedures required by this policy shall not apply when the Director of an Administering Department determines that the services needed are of a more technical nature and involve little professional judgment and that requiring bids would be in the public interest. (Gov. Code §4529.)
- K. The procedures set forth in this policy shall supersede any contrary or inconsistent County contracting policies regarding contracts for professional services.

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V. Preliminary Qualification Procedures

A. Major Projects.

1. Notification Process. When an Administering Department needs Professional Services on a Major Project, the Department shall notify Firms of the need through a countywide announcement in a publication of general circulation and shall post the announcement on the applicable departmental County web site.
2. Exclusion of Certain Firms Prior to Qualification Process. Distribution of work among qualified Firms is particularly desirable for Major Projects. Accordingly, prior to commencing the qualification process for a Major Project, the Director of the Administering Department may exclude from consideration any Firm to which the County has awarded a contract for another Major Project within the two-year period immediately preceding the date of publication or internet posting by the County of the initial announcement of the need for Professional Services for the proposed Major Project.
3. Qualification Committee. The qualification process for Major Projects shall be performed by a Qualification Committee composed of at least three members, all of whom shall be appointed by the Director of the Administering Department (or delegated staff) in a manner consistent with the criteria set forth in Section VI below. The committee shall evaluate the Firms' statements of qualifications, based on Evaluation Criteria, and shall then rank the Firms according to their relative satisfaction of such criteria. The Qualification Committee shall place the highest ranked Firms on a short list for consideration by the Selection Committee. The number of Firms placed on the short list shall be within the discretion of the Qualification Committee, subject to approval by the Director of the Administering Department.

- B. Minor Projects. Certain firms may be excluded prior to the Qualification Process or during the Selection Process. For Minor Projects, the Director of the Administering Department may exclude from consideration any Firm to which the County has awarded an aggregate of \$250,000 in Minor Projects within the preceding two-year period.

1. Alternate I - Major Project Qualification Process Also Applicable to Any Minor Project. Administering Departments may utilize the Major Project

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qualification process, described in Section V. A., above, to qualify Firms to provide Professional Services on any Minor Project.

2. Alternate II - As Needed Lists. When an Administering Department anticipates needing Firms in one professional discipline to perform one or a number of Minor Projects, the Administering Department may, at its sole discretion, utilize As-Needed lists of pre-qualified Firms from the appropriate discipline, as follows:
 - a. Joint County/City of San Diego As-Needed Lists
As-Needed lists shall be created and managed in accordance with provisions of the Cooperative Agreement.
 - b. Administering Department As-Needed Lists
Administering Departments may create As-Needed lists or use the Joint County/City of San Diego As-Needed Lists. As-Needed lists shall be created and managed in accordance with the provisions of the Minor Projects Qualification Procedures.
 - (i) Representatives of the Administering Departments shall formulate and implement procedures for identifying and qualifying Firms to perform Professional Services on Minor Projects.
 - (ii) The procedures shall be kept on file in the offices of Administering Departments and may be amended from time to time by representatives of the Administering Departments after consultation with, and approval by, County Counsel. All County departments and officers requiring Professional Services for minor projects shall be provided copies of the Procedures and shall be notified of any amendments to the Procedures prior to the effective date of any such amendment.
 - (iii) Qualified Firms shall be placed on appropriate As-Needed Lists in random order and shall be selected from a list for discussions with the Selection Committee.
 - (iv) Administering Department's As-Needed lists may be shared with the City of San Diego or at the discretion of the City of San Diego consultant contract coordinator, added to the Joint County/City of San Diego As-Needed lists in accordance with the provisions of the Cooperative Agreement.

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VI. Evaluation Criteria

- A. Evaluation Criteria. The Evaluation Criteria listed below shall be used when this policy or any procedures adopted pursuant to this policy require Firms to be ranked based on their qualifications. The Evaluation Criteria shall include, but not be limited to, the following:
1. Professional qualifications necessary for satisfactory performance of the required service.
 2. Specialized experience and technical competence in the type of work required.
 3. Capacity to accomplish the work in the required time.
 4. Past performance on projects of similar scope and nature in terms of cost control, quality of work, and compliance with performance schedules and standards.
 5. Location of the Firm relative to where the project services will be performed and/or pertinent knowledge of the project area.
 6. DVBE and Small Business Concern status and/or participation. This criterion shall be utilized during the Qualification Process for Major Projects and either during the Qualification or Interview Process for Minor Projects.
 7. Conformance with County Board of Supervisors Policies A-113, Drug and Alcohol Requirements for the Workplaces of County Contractors and Grantees, and C-25, County of San Diego Drug and Alcohol Use Policy, and appropriate County Administrative Codes.
 8. DBE status and/or participation. This criterion shall be utilized for Federally funded Department of Transportation (FAA, FHWA, FTA) projects when required under provisions of 49 CFR 26.
 9. Acceptability under other appropriate evaluation criteria. Evaluation Criteria may be weighted by a qualification or a selection committee to emphasize those criteria particularly significant to a project, or to de-emphasize those criteria not significant to a project.

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VII. Selection Process for All Projects.

- A. Selection processes for Major and Minor Projects shall be performed by a Selection Committee composed of at least two members for Minor Projects, and at least three members for Major Projects, all of which shall be appointed by the Director of the Administering Department in a manner consistent with criteria set forth in Section VI, above. The Selection Committee shall conduct discussions with an appropriate number of Firms from either of the following:
1. Major and Minor Projects: the short-list created by the Qualification Committee pursuant to Section V. A.3., above; or
 2. Minor Projects only: Firms selected from the As-Needed list for the appropriate discipline, in the manner set forth in the Procedures, where an As-Needed list is utilized by an Administering Department for a Minor Project.
- B. The Selection Committee shall evaluate the Firms based on the Evaluation Criteria, and shall then rank the Firms, in order of preference, according to their relative satisfaction of such criteria. For any one selection process, multiple projects may be awarded to firms in order of preference established by the Selection Committee. At the discretion of the Administering Department, the selection process ranking may be used for up to nine months to award additional projects to those firms not already selected for award of a project during the process.
- C. Incidental Minor Projects: When the Administering Department needs a Firm's Professional Services for an Incidental Minor Project, either one of the following processes may be used:
1. The Administering Department may use the process set forth under Section V. B., except that a Firm's position on an As-needed list will NOT be affected if a Firm is interviewed or selected for an Incidental Minor Project; or
 2. The Administering Department may negotiate a contract with a firm with which the County currently contracts to perform similar Professional Services, provided that the Administering Department interviews at least two qualified Firms currently under contract with the County; or

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3. If the Department is unable to locate a qualified Firm through either of the processes enumerated above, the Department may use a sole source selection per the procedures set forth in Board Policy A-87.

VIII. Contract Negotiations For All Projects

Negotiations for fair and reasonable compensation shall be initiated with the highest-ranked Firm selected for any project by the Selection Committee. For all projects, contract negotiations shall be conducted by a Negotiating Committee composed of at least two members, one of whom is a technical expert, approved by the Director of the Administering Department (or delegated staff). On projects where it is estimated that the fee will exceed \$500,000, a representative from the Department of Purchasing and Contracting shall be invited to be a member of the Negotiating Committee. If negotiations with the highest-ranked Firm for the project are not successful, negotiations with that firm shall be formally terminated in writing and negotiations shall proceed with the next highest-ranked Firm as determined by the Selection Committee. Negotiations shall continue in this manner until a mutually satisfactory agreement is reached or until the Director of the Administering Department elects to terminate negotiations with all firms in the current QBS process.

IX. Contract Execution

The Director of Purchasing and Contracting may execute contracts/agreements/ amendments pursuant to Section 401 of County of San Diego Administrative Code or as otherwise authorized by the Board of Supervisors. The Board of Supervisors must review and approve any contract for Professional Services which exceeds the Director of Purchasing and Contracting's authorized limits under Administrative Code Section 401 unless higher limits have been specifically authorized by the Board of Supervisors.

X. Specific Procedures and Policies applicable to Contracting for Professional Services

- A. Criteria for Membership on Qualification and Selection Committees. To achieve maximum objectivity in the selection process, no member of a Qualification Committee for any project (Major or Minor) may serve on the Selection Committee for that project. The respective appointed committee chairperson shall administer and be responsible for ensuring that the selection process conforms to this Policy. For projects with federal funding and a DBE participation goal, the Administering Department shall include at least one

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ethnic minority, female, or the department's Contract Compliance Coordinator as a member or observer on each Qualification Committee and Selection Committee.

- B. Sole Source. When a need arises to contract with a Firm with qualifications far exceeding those of any other Firms, or when only one Firm is qualified to perform the work required for a specific project, or where (for Minor Projects utilizing As-Needed lists for Firm qualification) the Firm is not on a current As-Needed list, the Administering Department may seek authorization to contract with such Firm in accordance with the exception processes contained in Board Policy A-87.
- C. Affirmative Action Management: In applying this policy, Administering Departments shall assure compliance with Administrative Code Article IIIk, Affirmative Action Program for Vendors, by incorporating the program into contract documents by reference or utilizing collaborative joint agency lists.
- D. Disclosure of Information. Disclosure of information compiled through the application of this policy shall be made in accordance with Board Policy A-54, Public Access to County Records.
- E. Consultant Debriefs: Debriefs requested by Firms as a result of the project QBS process shall be provided by the Administering Department on a time- and staffing-available basis. In the interest of providing accurate and informative feedback, requests for debriefs shall be honored only if requested in writing within two weeks of notification that the Firm was not qualified for the short list or was not selected. Debriefs requested more than two weeks following notification may be provided to the Firm at the discretion of the Administering Department.
- F. Procedural Manual. In addition to Minor Projects Qualifications Process described in Section V. B.2 above, procedures for implementing this policy shall be developed and maintained in the County Contracting Manual, and Administering Departments may develop and maintain supplemental departmental procedures to implement this policy.

Sunset Date

This policy will be reviewed for continuance by 12-31-2013.

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11-14-95 (18)
03-12-96 (25)
09-17-96 (28)
09-30-97 (16)
10-7-97 (27)
08-7-2002 (5)
02-27-2007 (9)

CAO Reference

1. Department of Environmental Health
2. Department of General Services
3. Department of Parks and Recreation
4. Department of Planning and Land Use
5. Department of Public Works
6. Department of Purchasing and Contracting